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**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Pacific Gas and Electric Company to Recover Costs Recorded in the Catastrophic Event Memorandum Account Pursuant to Public Utilities Code Section 454.9 and Forecasted Pursuant to Resolution ESRB-4. (U39E)

Application 18-03-015

**ADMINISTRATIVE LAW JUDGES' RULING DENYING  
PACIFIC GAS AND ELECTRIC MOTION  
FOR INTERIM RATE RELIEF**

**1. Summary**

Pacific Gas and Electric Company (PG&E) has moved (pursuant to Rule 11.1) for interim rate relief (PG&E's Motion) with respect to its 2018 Catastrophic Event Memorandum Account (CEMA) Application. PG&E seeks to begin recovering 75% of its 2016 and 2017 CEMA costs starting January 1, 2019 (through its Annual Electric True-up filing). PG&E's Motion is premised on the principle that it is entitled to mitigate presumed financial harm, and that a presumed abbreviated time lag between the CEMA Application filing and rate recovery would be protective of ratepayers.

Opposing PG&E's Motion are the Office of Ratepayer Advocates, now known as the Public Advocate's Office, and The Utility Reform Network (known here jointly as the Opposing Parties). The Opposing Parties assert that there is limited authority for PG&E's Motion and that the factors found in the Motion do not meet such conditional authority. Further, the Opposing Parties essentially

argue that PG&E substantially controlled the filing circumstances underlying the Motion.

The Motion is denied. The limited authority for PG&E's Motion is reserved for more exceptional circumstances than are found in this matter. PG&E has failed to demonstrate the requisite harm to meet the demonstration of need for interim rate relief. This Ruling has no impact on the merits of the underlying Application, which will be litigated in the course of this proceeding.

## **2. Discussion**

### **2.1. PG&E Motion**

PG&E's Motion presents one authority for its two arguments. The arguments rely upon the California Supreme Court (Court) case of *Toward Utility Rate Normalization v. Public Utilities Commission* (1988) 44 Cal.3d 870 (*TURN*). PG&E also presented a brief Declaration from its Chief Financial Officer (CFO).

*TURN* concerned a successful motion for interim rate relief brought by PG&E regarding its then-recent nuclear power plant known as Diablo Canyon. The Court confirmed that a utility may receive interim rate relief when considering a major new power plant investment in contrast to projected regular energy cost savings. The Court's review weighed two factors: the financial impact on the utility of its capital investment, and the financial impact on differing ratepayer rates over time due to recovery of the plant's capital cost versus the plant's projected long-term energy cost savings.

PG&E's Motion sought to apply *TURN* to the facts as PG&E presented them. First, PG&E posited that it would take six years to recover its CEMA costs. From that assertion, PG&E argued that the normal process of CEMA recovery may result in pressure on PG&E's cost of capital, redounding to the detriment of its shareholders. Further, PG&E argued that the presumed pool of ratepayers

that pay for that later recovery of CEMA cost expenditures might be somewhat different from those that benefited from those cost expenditures.

## **2.2. Opposing Party Response to PG&E Motion**

The Opposing Parties acknowledge the authority of the *TURN* case. However, they draw different conclusions from its opinion as to the requirements for consideration of a motion for interim rate relief. They assert that PG&E's Motion fails to meet those requirements.

In particular, the Opposing Parties argue that the facts of this proceeding fail to demonstrate that PG&E's Motion is justified. They point to PG&E's control of the timing of its CEMA application for relief, which they argue PG&E could in part have brought sooner. They also contend that PG&E's Motion fails to establish linkage between PG&E's CEMA application and PG&E's alleged pressure regarding its cost of capital.

## **2.3. Review of *TURN* Case**

As the parties agree upon the central importance of the *TURN* case, it is instructive to more deeply explore its facts and considerations. In that case, PG&E's capital investment had exceeded \$3 billion, which the Court deemed a "substantial part of the utility's total capital investment." (*Id.* at 876.) It is noted that given the passage of time since this 1988 case, the present-day value of such a sum would be greatly amplified.

The significance of the impact of PG&E's weighty capital investment was four square in the mind of the California Public Utilities Commission (Commission). As the *TURN* Court cites the Commission,

"the importance of cash flow to [PG&E] (sic) while we are in the process of making a final determination in this matter.'

There was evidence that cash flow is currently important in keeping down PG&E's costs of raising capital." (*Id.* at 876.)

In addition, the *TURN* case expressly referred to a "considerable period of time" (reasonably anticipated to be decades) between the significant capital cost expense of a nuclear plant and the significant fuel cost savings of a nuclear plant. (*Id.* at 876.) The case found that this created the risk of either undue benefit or detriment to the initial set of ratepayers who might over-pay or under-pay: potentially it would "provide them with a windfall, shifting the burden to future payers." (*Id.* at 877.) These unique circumstances in the *TURN* case should be borne in mind when considering PG&E's Motion.

### **3. Analysis**

The *TURN* case sets out factors to consider in review of the merits of PG&E's Motion. PG&E's Motion seeks to mitigate presumed financial harm, and to help ensure rate fairness between benefited and compensating ratepayers. The *TURN* case does not sufficiently support PG&E's arguments.

First, in the *TURN* case, PG&E's capital investment had exceeded \$3 billion, a "substantial part of the utility's total capital investment": according to the government's consumer price index on-line inflation calculator, in today's dollars that amount would be \$6.33 billion.<sup>1</sup> Here, the amount at issue in the Motion is "75% of the requested revenue requirement for the costs recorded in 2016 and 2017" (Motion at 1), which totals \$441.222 million. Therefore, in today's dollars, the amount at issue in this Motion is less than 15% of the amount at issue in the *TURN* case.

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<sup>1</sup> U.S. Department Labor Bureau of Labor Statistics inflation calculator: [https://www.bls.gov/data/inflation\\_calculator.htm](https://www.bls.gov/data/inflation_calculator.htm)

PG&E's CFO's Declaration failed to provide any sort of calculation as discussed above. That Declaration provided general information and stated that "PG&E has not issued new long-term debt, but interest on its bonds are (sic) already over 100 basis points [i.e., 1%] higher than a year ago..." However, that Declaration provided no calculation, evidence, or support for a specific understanding as to how the amount sought in the Motion For Interim Rate Relief would impact PG&E's cost of capital or cash flow -- i.e., how PG&E is affected by carrying \$441.222 million on its books for the period of time until rate recovery would be granted under the merits of the CEMA Application in the usual course of operations.

Second, in the *TURN* case, there was express reference to a "considerable period of time" between the significant capital cost expense of a nuclear plant and the significant fuel cost savings of a nuclear plant, and that period could have been reasonably anticipated to last decades. Therefore, the risk was that either an initial or a later set of ratepayers might receive a "windfall." There are two factors to consider in reviewing this line of analysis for the present Motion.

The first factor is that PG&E chose to bring, under this single CEMA Application, a total of nine past and two forecasted set of costs. The nine past costs spanned two years, and the total revenue requirement requested is \$588.296 million: approximately \$273.578 million for 2016, and approximately \$314.717 million for 2017. Had it chosen to do so, PG&E could have brought a CEMA Application for 2016 costs substantially sooner, and PG&E could have brought a CEMA Application for 2017 costs somewhat sooner, and not tied those CEMA Application costs to its novel request for a forecasted set of costs.

Because PG&E controlled the timing of the filing of its combined CEMA Application, and because PG&E is well familiar with the timing of revenue

requirement operations in the usual course of operations, the Motion's sense of urgency does not match PG&E's actions. While far from trivial sums -- indeed, the sums are substantial, and the hiring of an independent auditor is required for their review -- nothing precluded PG&E from seeking their recovery sooner. Therefore, it appears that PG&E did not pursue this matter with the sense of urgency that it now seeks from the Commission.

The second factor to consider is the risk of disparate impact on potentially different sets of ratepayers. This risk, in comparison to the circumstances found in the *TURN* case, are minimal. In *TURN*, there was a substantial "delta" between the large immediate capital costs and the large future energy costs savings, and there was a substantial "delta" between the periods when the capital costs were incurred and when the future energy costs would be saved.

Here, as evidenced by the facts and arguments raised by both sides, the deltas involved would be a fraction of the dollar amount and a fraction of the period of time found in *TURN*. The dollar difference between this CEMA Application and *TURN* is discussed above. The period of time difference is, according to the Motion's argument, "up to six years" (Motion at 2) and according to the Opposing Parties "interim rate recovery would only accelerate the initiation of the rate recovery period by one year, and even then it would begin some two or three years after the costs were incurred" (Joint Response at 12): each of these periods is vastly less than the time-lag concerns raised in *TURN*.

#### **4. Conclusion**

PG&E has not met its burden of persuasion that such relief should be granted. This Ruling does not otherwise affect this continuing proceeding.

**IT IS RULED** that Pacific Gas and Electric Company's Motion for Interim Rate Relief is denied.

Dated November 2, 2018, at San Francisco, California.

/s/ PETER V. ALLEN

Peter V. Allen  
Administrative Law Judge

/s/ JASON JUNGREIS

Jason Jungreis  
Administrative Law Judge